



DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Indiana

AGENCY: Federal Highway Administration (FHWA), DOT

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and United States Army Corps of Engineers (USACE), DoD.

SUMMARY: This notice announces actions taken by the FHWA and the USACE that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to proposed highway projects for a 26.7 mile segment of I-69 in the Counties of Greene and Monroe, State of Indiana, and grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1) and are final within the meaning of that law. A claim seeking judicial review of those Federal agency actions that are covered by this notice will be barred unless the claim is filed on or before April 14, 2013. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then the shorter time period applies.

FOR FURTHER INFORMATION CONTACT: For the FHWA: Ms. Michelle Allen, Federal Highway Administration, Indiana Division, 575 North Pennsylvania Street, Room 254, Indianapolis, IN 46204-1576; telephone: (317) 226-7344; e-mail: Michelle.Allen@dot.gov. The FHWA Indiana Division Office's normal business hours are 7:30 a.m. to 4 p.m., e.t. For the USACE: Mr. Greg McKay, Chief, North Section Regulatory Branch, Louisville District, United States Army Corps of Engineers, P.O. Box 59, Louisville, KY 40201-0059; telephone: (502) 315-6685; email: gregory.a.mckay@usace.army.mil. Normal business hours are 8 a.m. to 5 p.m., e.t. You may also contact Mr. Thomas Seeman, Project Manager, Indiana Department of Transportation (INDOT), 100 North Senate Avenue, Indianapolis, IN

46204; telephone: (317) 232-5336; e-mail: TSeeman@indot.IN.gov. Normal business hours for the Indiana Department of Transportation are: 8 a.m. to 4:30 p.m., e.t.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the highway project in the State of Indiana listed below. The actions by the Federal agencies on the project, and the laws under which such actions were taken, are described in the Record of Decision (ROD), Reevaluation Documents to the final environmental impact statements (FEIS) issued in connection with the project, Section 404 Discharge of Dredged or Fill Material Permit, and in other documents in the FHWA administrative record for the project. The ROD and other documents from the FHWA administrative record files for the listed project are available by contacting the FHWA or the Indiana Department of Transportation (INDOT) at the addresses provided above. Project information may also be available through the INDOT I-69 Project Web site at <http://www.i69indyevn.org/>. People unable to access the Web site may contact FHWA or INDOT at the addresses listed above. This notice applies to all Federal agency decisions on the listed project as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to: 1. National Environmental Policy Act (NEPA) [42 U.S.C. 4321-4351]. 2. Endangered Species Act [16 U.S.C. 1531-1544]. 3. Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128]. 4. Clean Air Act, 42 U.S.C. 7401-7671(q). 5. Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]. 6. Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]. 7. Bald and Golden Eagle Protection Act [16 U.S.C. 688-688d]. 8. Clean Water Act, 33 U.S.C. 1251-1377 (Section 404, Section 402, Section 401, Section 319). Previous actions taken by the USFWS for the Tier 1, I-69 project, pursuant to the Endangered Species Act, 16 U.S.C. 1531-1544, included its concurrence with the FHWA's determination that the I-69 project was not likely to adversely affect the eastern fanshell mussel (*Cyprogenia stegaria*) and that the project was likely to adversely affect, but not jeopardize, the bald eagle. The USFWS also concluded that the project was not likely to jeopardize the continued existence of the Indiana bat and was not likely to

adversely modify the bat's designated Critical Habitat. These USFWS decisions were described in the Programmatic Biological Opinion issued on December 3, 2003, the Revised Programmatic Biological Opinion issued on August 24, 2006, and other documents in the Tier 1 project records. A Notice of Limitation on Claims for Judicial Review of these actions and decisions by the USFWS, DOI, was published in the **Federal Register** on April 17, 2007. The USFWS affirmed its decisions in the Amendment to the Revised Programmatic Biological Opinion issued on May 25, 2011. A Notice of Limitation on Claims for Judicial Review of these actions and decisions by the USFWS, DOI, was published in the **Federal Register** on July 20, 2011. A claim seeking judicial review of the Amendment to the Revised Programmatic Biological Opinion must have been filed by January 17, 2012, to avoid being barred under 23 U.S.C. 139(l).

The project subject to this notice is Section 4 of the I-69 highway project from Evansville to Indianapolis, which extends from U.S. 231 (near Crane Naval Surface Warfare Center) to near the intersection of State Road 37 and Victor Pike Road. Notice is hereby given that, subsequent to the earlier FHWA notice, the FHWA has taken final agency actions within the meaning of 23 U.S.C. §139(l)(1) by approving five (5) Reevaluations of the Tier 2, Section 4 Record of Decision issued on September 8, 2011. Section 4 of the I-69 project extends from U.S. 231 just north of the Crane Naval Surface Warfare Center to S.R. 37 south of the City of Bloomington. Section 4 is a new alignment, fully access-controlled highway. As approved in the Tier 1 ROD, the corridor is generally 2000-feet wide. The ROD selected Refined Preferred Alternative 2 for Section 4, as described in the I-69 Evansville to Indianapolis, Indiana, Tier 2 Final Environmental Impact Statement, Crane NSWC to Bloomington, Indiana (FEIS), available at <http://www.i69indyevn.org/section-4-feis>. The ROD also approved the locations of the interchanges, grade separations, and access roads (which include new roads, road relocations, and realignments). On September 29, 2011, the FHWA published a "Notice of Limitation on Claims for Judicial Review of Actions by FHWA and United States Fish and Wildlife Service (USFWS), DOI" in the **Federal Register** at (76 FR 60583-01) for the Section 4, 26.7 mile segment of I-69 in the Counties of Greene and Monroe.

A claim seeking judicial review of the Tier 2, Section 4 decisions must have been filed by March 27, 2012, to avoid being barred under 23 U.S.C. 139(l). The five (5) Reevaluations of the Tier 2, Section 4 ROD include: 1) the November 4, 2011 Reevaluation, which was prepared to evaluate the impacts of additional temporary right-of-way areas (including temporary right-of-way required to accommodate demolition activities for building removal) made necessary based on final design that were not analyzed in the Tier 2 Section 4 ROD or FEIS (approved July 13, 2011); 2) the June 12, 2012 Reevaluation, which was prepared to evaluate the effects of additional right-of-way and improvements (including right-of-way required to decrease bank slopes in an area of inadequate soil conditions) made necessary based on final design that were not analyzed in the Tier 2 Section 4 ROD or FEIS (approved July 13, 2011); 3) the July 11, 2012 Reevaluation, which was prepared to evaluate the impacts of additional right-of-way areas (including temporary right-of-way required to accommodate demolition activities for building removal and filling the remaining portion of an impacted pond) made necessary based on final design that were not analyzed in the Tier 2 Section 4 ROD or FEIS (approved July 13, 2011); 4) the July 31, 2012 Reevaluation, which was prepared to evaluate the impacts of additional right-of-way areas (including temporary right-of-way required to accommodate demolition activities for building removal, temporary right-of-way required for construction of a private drive, and permanent right-of-way required for construction of a cul de sac.) made necessary based on final design that were not analyzed in the Tier 2 Section 4 ROD or FEIS (approved July 13, 2011); and 5) the October 11, 2012 Reevaluation, which was prepared to evaluate the impacts of additional right-of-way areas (including temporary right-of-way and permanent right-of-way required for construction a modified interchange) made necessary based on final design that was not analyzed in the Tier 2 Section 4 ROD or FEIS (approved July 13, 2011). The analysis in each of the Reevaluations supports the FHWA's conclusions that none of the changes examined will have impacts sufficient to require preparation of a Supplemental Environmental Impact Statement (SEIS) or an additional Draft Environmental Impact Statement (DEIS) for Section 4, and therefore that the Tier 2 Section 4 FEIS and ROD remain valid. The detailed analysis of the reevaluation documents along with

the federal decision of minimal impact can be found on the project web site at <http://www.i69indyevn.org/reevaluation-documents/>.

In addition, notice is hereby given that, subsequent to the earlier FHWA notice, the USACE has taken final agency actions within the meaning of 23 U.S.C. §139(*l*)(1) by issuing permits and approvals for the highway project. The actions by the USACE, related final actions by other Federal agencies, and the laws under which such actions were taken, are described in the USACE decisions and its project records, referenced as Department of the Army (DA) Permit, Number LRL-2011-0041-djd. That information is available by contacting the USACE at the address provided above.

On September 22, 2011, INDOT filed an application with the USACE for authorization under Section 404 of the Clean Water Act, 33 U.S.C. § 1344, to construct the 26.7 mile Section 4 I-69 project. On October 1, 2012, the USACE took final action in issuing the Department of the Army (DA) Permit for the Section 4 I-69 project, Number LRL-2011-0041-djd, as described in the USACE decision and its administrative record for the project. As part of the Section 4 project, which begins at the northern terminus of the Section 3 project in Greene County and terminates at S.R. 37 and Victor Pike Road in Monroe County, there are 18 crossings of water resources requiring individual permits from the USACE, including streams, open water and emergent, scrub-shrub and forested wetlands. Subject to the permit conditions, INDOT is permitted to discharge 34,154 cubic yards of fill material below the Ordinary Highway Water Mark of 88,462 linear feet of stream channels, and to discharge 190,215 cubic yards of fill material into 9.42 acres of open water and emergent, scrub-shrub, and forested wetlands in constructing these 18 crossings.

The actions by the Federal agencies on the project, and the laws under which such actions were taken, are described in the Reevaluation documents, the Department of the Army (DA) Permit (LRL-2011-0041-djd), and in other documents in the FHWA administrative record for the project. The ROD and other

documents from the FHWA administrative record files for the Section 4 projects are available by contacting FHWA, USACE or INDOT at the addresses provided above. Project information may also be available through the INDOT I-69 Project Web site at <http://www.i69indyevn.org/>.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1)

Richard Marquis

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Indiana.*

[FR Doc. 2012-27617 Filed 11/14/2012 at 8:45 am; Publication Date: 11/15/2012]